

Remarks

Claims 1-5 and 7-20 are pending. Claims 2, 3, and 9-18 have been withdrawn pursuant to a restriction requirement. Claim 4 has been narrowed to the elected invention. Claim 6 has been canceled and replaced by new claims 19 and 20. Claim 19 recites a process for the preparation of compounds of formula II (based on the specification pages 31-32), while claim 20 is directed to a corresponding process for compounds of formula III (based on the specification pages 58-59).

The Examiner rejects claim 6 under 35 U.S.C. 112(1) & (2) for non-enabling and indefiniteness. Claim 6 has been canceled and replaced by claims 19 and 20. Claim 19 is drawn to a process for the preparation of compounds of formula II, while claim 20 is directed to a corresponding process for compounds of formula III, both employing compounds of formula I. Applicants submit that the more tailored claims are clear and enabled by the specification herein.

The Examiner rejects claims 1 and 6 (now claim 1, 19 and 20) under 35 U.S.C. 102 as being anticipated by U.S. Pat. No. 5,721,292 ("Leppard et al."). The Examiner asserts that Leppard discloses compounds falling within the scope of the claims. Applicants respectfully traverse this rejection.

The Examiner refers to col. 5, lines 24ff, where a formula $[R^x-CO]_2-PLi$ is given, which then is further reacted with a halide compound having a R^y-CO group to give an asymmetrical trisacylphosphine compound, because R^x and R^y are defined as "different radicals R_1, R_2, R_3 ".

In the compound of formula I according to the present invention, R_6 is not defined "COR₁₁" as the Examiner alleges. R_6 is defined as "alkyl, unsubstituted or substituted by [...]" COR₁₁". Thus, no compounds with two acyl groups directly bonded to the P-atom are covered by the definition and therefore identity with the disclosure of Leppard is not given, i.e. the compounds as claimed are novel in view of this reference. Applicants request that the Examiner reconsider and withdraw her anticipation rejection of claim 1 (possibly claims 19 and 20) in view of Leppard.

The Examiner rejects claims 1, 5 and 6 under 35 U.S.C. 102(e) as being anticipated by published U.S. Patent Application 2001/0031898. The 102(e) date for the '898 Application is February 5, 2001. Applicants submit a certified translation of our priority document to establish an earlier date to overcome this rejection. The Examiner makes a corresponding provisional obviousness-type double patenting rejection in view of '898 Application for claims 1 and 4-6. The Examiner makes an additional provisional obviousness-type double patenting rejection of claims 1 and 4-6 over claims 1-16 in copending application 09/856,769. Applicants note that these rejections are provisional and request the opportunity to file the terminal disclaimer (if any) at such time that there are no other remaining rejections.

Applicants submit that the present application is now substantially in condition for allowance. In the event that minor amendments would further prosecution, Applicants request that the Examiner contact the undersigned representative.

Respectfully submitted,



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